

**IN THE UNITED STATES DISTRICT COURT
IN THE DISTRICT OF DELAWARE**

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| <p>L.J. Zucca, Inc.</p> <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> <p>Allen Bros. Wholesale Distributors, Inc., Cooper-Booth Wholesale Company, Eby Brown Company, LLC, and Klein Candy Company, LP</p> <p style="text-align: center;">Defendant(s)</p> | <p>C.A. No. 1:07-cv-00002***</p> <p>Removed from Superior Court, New Castle County, Delaware C.A. No. 2572-N</p> <p>JURY TRIAL DEMANDED</p> |
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**ANSWER, ADDITIONAL DEFENSES, AND JURY TRIAL DEMAND
OF ALLEN BROS. WHOLESALE DISTRIBUTORS, INC.**

Defendant, Allen Bros. Wholesale Distributors, Inc. (hereinafter “Answering Defendant”), by and through counsel, hereby answers the First Amended Verified Complaint of Plaintiff, L.J. Zucca, Inc., (hereinafter “Verified Complaint”) and states as follows:

PRELIMINARY STATEMENT

The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. To the extent a response is required, they are denied and strict proof thereof is demanded.

THE PARTIES

1. Admitted.
2. Admitted.
3. Admitted
4. Admitted.
5. Admitted.

6. Admitted with respect to Answering Defendant. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

JURISDICTION AND VENUE

7. Answering Defendant admits only that the U.S. District Court for the District of Delaware has subject matter jurisdiction over this case and controversy. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

FACTUAL BACKGROUND

8. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. To the extent that a response is required, Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

9. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

10. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

11. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information

sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

12. Denied.

13. Denied.

14. Denied.

ALLEGATIONS AGAINST INDIVIDUAL DEFENDANTS

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

20. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

21. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

22. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

23. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

24. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

25. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

26. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

27. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

28. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

29. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

30. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

COUNT I
(Violations of the Delaware Unfair Cigarettes Act)
(Against All Defendants)

31. Answering Defendant repeats and incorporates its responses to the preceding paragraphs of the Verified Complaint, as if fully set forth herein.

32. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

33. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

34. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

COUNT II
(Tortious Interference with Existing Contracts)
(Against All Defendants)

35. Answering Defendant repeats and incorporates its responses to the preceding paragraphs of the Verified Complaint, as if fully set forth herein.

36. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

37. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

38. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

39. Answering Defendant repeats and incorporates its responses to the preceding paragraph of the Verified Complaint, as if fully set forth herein.

40. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

41. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

42. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

COUNT III
(Tortious Interference with Prospective Economic Advantage)
(Against All Defendants)

43. Answering Defendant repeats and incorporates its responses to the preceding paragraphs of the Verified Complaint, as if fully set forth herein.

44. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

45. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

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sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

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50. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

COUNT IV
(Unfair Competition)

51. Answering Defendant repeats and incorporates its responses to the preceding paragraphs of the Verified Complaint, as if fully set forth herein.

52. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

53. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information

sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

54. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

COUNT V
(Injunction)

55. Answering Defendant repeats and incorporates its responses to the preceding paragraphs of the Verified Complaint, as if fully set forth herein.

56. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

57. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

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59. The allegations set forth in this paragraph constitute mere conclusions of law to which no response is required. Answering Defendant is without knowledge or information

sufficient to form a belief as to the truth of the allegations directed to the parties other than Answering Defendant and, therefore, they are denied.

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ADDITIONAL DEFENSES

1. Answering Defendant did not commit any act or omission which was or may have been a proximate cause of any damages suffered by Plaintiff.

2. The Verified Complaint fails to state a cause of action upon which relief can be granted.

3. The claims set forth in the Verified Complaint are barred in whole or in part by the applicable statute(s) of limitations.

4. The claims set forth in the Verified Complaint are barred by the doctrine of estoppel.

5. The claims set forth in the Verified Complaint are barred by the doctrine of waiver.

6. The claims set forth in the Verified Complaint are barred by the doctrine of laches.

7. The claims set forth in the Verified Complaint are barred by the doctrine of unclean hands.

8. The claims set forth in the Verified Complaint are barred by the statute of frauds.

9. The supervening cause of Plaintiff's damages, if any, was the conduct of persons other than Answering Defendant over whom Answering Defendant had no control.

10. The claims set forth in the Verified Complaint were solely caused by Plaintiff's own conduct.

11. The claims set forth in the Verified Complaint are barred, in whole or in part, by Plaintiff's failure to mitigate claimed damages.

12. Plaintiff is barred from profiting or benefiting from any alleged illegal payments and/or conduct alleged in its Verified Complaint.

13. Answering Defendant owed no duty to Plaintiff.

14. Plaintiff's claims are barred by reason of duress perpetrated upon Answering Defendant.

15. Plaintiff's claims are barred due to fraud and or illegality.

16. Plaintiff's claims are barred by public policy.

17. The Delaware Unfair Cigarette Sales Act is inapplicable for the reasons set forth in 6. *Del. C.* 2605.

18. The Delaware Unfair Cigarette Sales Act is preempted by federal law.

19. The Delaware Unfair Cigarette Sales Act is unconstitutional under the Delaware Constitution.

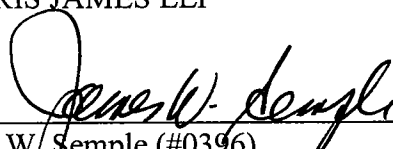
20. Answering Defendants hereby reserve the right to assert upon completion of their investigation and discovery such additional defenses, affirmative defenses, counterclaims and/or claims against third-party defendants as may be appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Answering Defendant demands a trial by jury, as to all issues so triable.

WHEREFORE, Answering Defendant demands judgment in its favor, dismissal of The claims set forth in the Verified Complaint with prejudice, an award of attorneys' fees and costs, as well as such other relief as the Honorable Court deems just and proper.

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Allen Bros. Wholesale Distributors, Inc.

February 15, 2007